IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 743 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARMANAND C SHARMA

Versus

SPECIAL SECRETARY APPEALS& 1

Appearance:

MR AJ PATEL with MR CH VORA for Petitioner

MR IM PANDYA, AGP, for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/08/2000

ORAL JUDGEMENT

1. The petitioner is aggrieved by an order passed by Secretary (Appeals), Revenue Department, on October 25, 1994, bearing No.SRD/BKP/Suo motu/Kutch/14/94, in exercise of powers under Section 211 of the Bombay Land Revenue Code, remanding the matter to District Development Officer (D.D.O.), Kutch-Bhuj, while setting aside the order of the D.D.O., Kutch-Bhuj bearing No.DP/Rev./NA/49/92-93 dated June 19, 1993.

2. The facts of the case, in brief, are that the petitioner was granted non-agricultural use permission under Section 65 of the Bombay Land Revenue Code by the District Development Officer in respect of land bearing Survey No.98 of village Galpadar, admeasuring 20235 sq. metres. That order is Annexure-A. The said permission was granted for commercial-cum-service oriented purposes upon certain conditions. After the permission was granted, the petitioner has developed the land for construction of a Three Star Hotel-cum-Resort. After the lapse of about one year, the Secretary (Appeals), Revenue Department, initiated suo motu proceedings in exercise of powers under Section 211 of the Bombay Land Revenue Code in respect of the N.A. permission granted and passed the impugned order remanding the matter to the District Development Officer to once again consider the grant of N.A. use permission keeping in light certain observations made by the Secretary.

3. The petitioner herein challenges that order on various counts. Learned counsel, Mr. A.J. Patel, appearing for Mr. C.H. Vora for the petitioner, submitted that the order has been set aside by respondent No.1 on erroneous construction of facts and law. He submitted that respondent No.1 has proceeded on a premise that the land in question could not have been converted to non-agricultural use for using the same as commercial-cum-service oriented purposes. According to Mr. Patel, specific permission was granted and such permissions are permissible only with a view to satisfy the domestic needs of the local population. Mr. Patel submitted further that the second ground which has weighed with respondent No.1 for passing the order is that the land in question is within the jurisdiction of Gandhidham Development Authority (GDA) and, therefore, conversion tax was payable and D.D.O. was in error in holding, without ascertaining, that because the land in question is beyond the distance of one kilo metre from the boundary of Gandhidham Nagarpalika, conversion tax is not leviable. Mr. Patel submitted that, if the provision of law is seen, it is very clear that, if the land falls beyond one kilo metre from the boundary of the

local authority, conversion tax would not be applicable. As regards factual aspect, Mr. Patel has drawn attention of this Court to a communication received by the D.D.O. to indicate that the land in question is beyond the distance of one kilo metres from the boundary of jurisdiction of Gandhidham Nagarpalika. Mr. Patel submitted that the lay out plan has also been sanctioned by the GDA, the competent authority, by permission No.17077/LP dated the 25th March, 1994. After following complete procedure, the petitioner has developed the land by spending sizeable amount of money. A hotel is to be constructed which has been given a Three Star certificate. Mr. Patel submitted that this would reflect that the petitioner has spent huge amount and, therefore, the impugned action is initiated after lapse of about one year. Mr. Patel relied on the decision in the case of (M/s) Yashkamal Builders, Baroda v. State of Gujarat & Ors., 1989(1) GLH 177 and the decision in the case of Mohmad Kavi Mohamad Amin v. Fatmabai Ibrahim, (1997) 6 SCC 71 in support of his case.

4. Mr. Pandya, learned Assistant Government Pleader, submitted that this petition is devoid of merits. Respondent No.1 has taken into consideration various aspects and has only remanded the matter to the D.D.O. for reconsidering the question of grant of N.A. permission in view of certain observations made by respondent No.1. The petitioner can very well draw attention of the District Development Officer to the contentions raised by the petitioner herein and the petition, therefore, may be dismissed. On merits, Mr. Pandya submitted that the land falls within the jurisdiction of GDA and, therefore, conversion tax is required to be paid. He submitted further the land was meant for industrial purpose, which has now been sought to be converted to commercial-cum-service oriented use which is not permissible and, therefore, the order in question cannot be said to be erroneous. Mr. Pandya submitted that the petition may, therefore, be dismissed.

5. Considering the contentions that are raised before this Court, there is no dispute about the fact that the land in question was originally meant for agricultural use. But it fell within the industrial zone and was then permitted to be converted to N.A. use for commercial-cum-service oriented purpose by virtue of the order of the D.D.O., Kutch-Bhuj, dated the 19th June, 1993 (Annexure-A). While passing that order, the District Development Officer had obtained requisite information and opinion from various authorities, as stated in the preamble of the order Annexure-A. This

order was taken in suo motu revision and was set aside by the order Annexure-H. The main reasons that weighed with the Secretary (respondent No.1) for setting aside the order are that the D.D.O. has not verified if the land in question falls within the peripherial limits of GDA and without ascertaining that, held that conversion tax is not leviable. The second fact that weighed with respondent No.1 is that the lay out plan in respect of land in question has not been approved by Deputy Town Planning Officer and for these two reasons, the order in question was set aside.

6. Now, if the order of the D.D.O. (Annexure-A) is examined, it is very clear that he had sought information from District Inspector of Land Records, Kutch-Bhuj and was informed by communication dated 11.6.1992 (Annexure-E) that survey No.98, i.e. the land in question falls outside the peripherial area of one kilo metre from the boundary of Gandhidham Nagarpalika. This letter has been referred to by the D.D.O. at item No.13 in the preamble of his order Annexure-A. The observation of respondent No.1 that the conclusion of the D.D.O. that conversion tax is not payable is without ascertaining whether the land falls outside the peripherial limits is not correct. The peripherial limit of one kilo metre from the boundary of G.D.A. considered by respondent No.1 is not proper or correct. So far as leviability of conversion tax is concerned, clause (b) of subsection (2) of Section 67-A of the Bombay Land Revenue Code and the explanation to the table under that Section make it amply clear that where the land falls outside peripherial area of five kilo metres in case of Ahmedabad or other local area which is considered to be a city under Section 3 of the Bombay Provincial Municipal Corporation Act, 1949 or a town with a population exceeding Rs.2.5 lakhs or one kilo metre in relation to any other city or town, as the case may be, the conversion tax would not be payable and, therefore, the observation of respondent No.1 that peripherial area of G.D.A. is to be ascertained is erroneous and quashing of the D.D.O's order Annexure-A on this ground cannot be permitted. The peripherial limits contemplated under Section 67A of the Bombay Land Revenue Code is to be considered in respect of the 'Municipal Borough', as it is clear from the language employed in the Section. Relevant portion of Section 67A(3) of Bombay Land Revenue Code runs as under :-

"(3).....

Explanation-.....

(a) "adjoining area" means-

(i) in relation to the City of Ahmedabad or any other local area which is constituted to be a City under Section of the Bombay Provincial Municipal Corporations Act, 1949 (Bom.LIX 1949), as in is force in the State of Gujarat or a municipal borough with a population exceeding 2.5 lakhs, a peripheral area of five kilometres;

(ii) in relation to any other municipal borough, a peripheral area of one kilometre;

(b) "municipal borough" or notified area means respectively a municipal borough or a notified area within the meaning of the Gujarat Municipalities Act, 1963 (Guj.34 of 1964);

(c) "population" means a population as ascertained at the last preceding census of which relevant figures have been published." (emphasis supplied)

The construction or interpretation made or meaning given to Section 67-A of the Land Revenue Code by respondent No.1 that limit of adjoining area or peripherial limit is to be considered qua G.D.A. is, therefore, not proper. It would amount to reading what is not provided or written in the Section as the explanation in the said Section clearly refers to Municipal Borough while defining the term 'adjoining area'. The interpretation made by respondent No.1 in the impugned order, therefore, cannot be permitted to stand.

7. Coming to the second factor that weighed with respondent No.1, namely, that the lay out plan has not been approved by the Deputy Town Planning Officer, it may be noted that, it is clear from Annexure-F and Annexure-G that the plans have been approved by the Deputy Town Planning Officer, Bhuj, by communication dated the 8th March, 1994, addressed to the Secretary, GDA, and GDA, in turn, granted permission under Section 8(2) of the Gandhidham (Development & Control on Erection of Buildings) Act, 1957 for development of the site (change in lay out plan) of survey No.98 Paiki of village

Galpadar, i.e. the land in question. It would be worthwhile to note that GDA is the proper authority which has been authorised to grant such permission by virtue of a notification issued in the Gazette (Extraordinary) of January 4, 1993 (Annexure-T) whereby the GDA exercised powers conferred by Section 6 of the Gandhidham (Development and Control on Erection of Buildings) Act, 1957 regarding zones in revenue survey numbers and by adding direction 7(c), decided to earmark some pockets along Galpadar Road towards north 275 metres from the centre of the road for commercial-cum-service oriented purposes and, therefore, the GDA, by order dated the 25th March, 1994, granted permission to the petitioner subject to certain conditions. Mr. A.J. Patel, learned counsel for the petitioner has, today, produced on record true copy of communication dated the 25th March, 1994 from the GDA and communication from the Deputy Town Planning Officer dated the 8th March, 1994 (which are already on record) along with a plan approved by the Deputy Town Planning Officer. The observation of respondent No.1 on this count and the consequent setting aside of the order of the D.D.O., therefore, does not find support from the facts on record.

8. For the foregoing reasons, it is found that the two factors which weighed with respondent No.1 for setting aside the order of the D.D.O. (Annexure-A) are not proper or legal.

9. Besides this, the suo motu revision is initiated after a lapse of about a year, during which time, the petitioner has developed the land by investing huge funds as contended in the petition. This aspect is conspicuous from the documents to indicate that requisite permissions for running a hotel and resort have been produced on record (Annexures-I to L). The contention about large investments made for development of land has remained uncontroverted. The petitioner has also incurred liability by borrowing money from financial institutions. This is evident from Annexures-M to Q. The cause for action after lapse of nearly one year has not been tried to be explained or justified. No affidavit in reply is filed.

10. Keeping all these factors in mind, no purpose is going to be served if the matter is permitted to be remanded to the D.D.O. for considering the question of grant of non-agricultural use permission, as the basis on which the order Annexure-A was found to be erroneous does not merit acceptance as discussed earlier. There are no other grounds found by respondent No.1 to consider the

order Annexure-A as erroneous and, therefore, it would only have the effect of thrusting upon the petitioner one more round of legal battle. Under the circumstances, the petition deserves to be allowed and the same is allowed. The impugned order Annexure-H is hereby quashed and set aside. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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